



CALIFORNIA STATE BOARD OF EDUCATION

NOVEMBER 2012 AGENDA

General Waiver

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| SUBJECT Request by Riverside Unified School District to waive California <i>Education Code</i> Section 5020, and portions of sections 5019, 5021, and 5030, that require a district-wide election to establish new trustee areas. Waiver Number: 36-7-2012 | <input checked="" type="checkbox"/> Action <input checked="" type="checkbox"/> Consent |
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RECOMMENDATION

Approval **Approval with conditions** **Denial**

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The California State Board of Education (SBE) has approved numerous similar waiver requests during the past four years—the most recent ones were waiver requests from four school districts that were approved at the July 18, 2012, SBE meeting.

SUMMARY OF KEY ISSUES

Approval of this waiver request would eliminate the election requirement for approval of trustee areas and a by-trustee-area method of election for future governing board elections in the Riverside Unified School District (USD). Voters in the district will continue to elect all board members—however, if the waiver is approved, all board members will be elected by trustee areas, beginning with the next board election.

The county committee on school district organization (county committee) has the authority to approve or disapprove the adoption of trustee areas and methods of election for school district governing board elections. Pursuant to California *Education Code (EC)* Section 5020, county committee approval of trustee areas and methods of election constitutes an order of election; thus, voters in the district have final approval.

A number of districts in California are facing existing or potential litigation under the California Voting Rights Act of 2001 over their at-large election methods. To help protect itself from potential litigation, the Riverside USD is taking action to establish trustee areas and adopt a by-trustee-area method of election for the governing board. In order to establish these trustee areas and the method of election as expeditiously as possible, the district is requesting that the SBE waive the requirement that the trustee areas and the election method be approved at a district-wide election.

This waiver request has been reviewed by California Department of Education (CDE) staff and a determination has been made that: (1) the waiver was initiated by action of the governing board; and, (2) there was no significant public opposition to the waiver at the public hearing held by the governing board.

Only the election to establish trustee areas and election method will be eliminated by approval of the waiver request—voters in the school district will continue to elect all governing board members. Moreover, approval of the waivers will not eliminate any existing legal rights of currently seated board members.

The CDE finds that none of the grounds specified in *EC* Section 33051, which authorize denial of a waiver, exist. The CDE recommends that the SBE approve the request by the Riverside USD to waive *EC* Section 5020 in its entirety and portions of *EC* sections 5019, 5021, and 5030.

Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=33001-34000&file=33050-33053>.

Demographic Information: The Riverside USD has a student population of 42,335 and is located in an urban setting in Riverside County.

Authority for Waiver: *EC* Section 33050

Period of request: July 1, 2012, to June 30, 2013 (requested)
July 1, 2012, to June 29, 2014 (recommended)

Local board approval date(s): July 16, 2012

Public hearing held on date(s): July 16, 2012

Bargaining unit(s) consulted on date(s): California School Employees' Association (CSEA): July 5, 2012; River City Teachers' Association (RCTA): July 5, 2012

Name of bargaining unit/representative(s) consulted: CSEA: Richard Carpenter, President; RCTA: Tim Martin, President

Position of bargaining unit(s) (choose only one):

Neutral Support Oppose:

Comments (if appropriate):

Public hearing advertised by (choose one or more):

posting in a newspaper posting at each school posted at multiple offices and on District web page. other (specify): notice

Advisory committee(s) consulted: Community representatives of Latino and African American Committee.

Objections raised (choose one): None Objections are as follows:

Date(s) consulted: July 11, 2012

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver request will not have negative fiscal effects on any local or state agency. Failure to approve the waiver request will result in the additional costs to the district for a district-wide election.

ATTACHMENT(S)

Attachment 1: Riverside Unified School District (36-7-2012) General Waiver Request. (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

CALIFORNIA DEPARTMENT OF EDUCATION
GENERAL WAIVER REQUEST
 GW-1 (Rev. 10-2-09) <http://www.cde.ca.gov/re/lr/wr/>

First Time Waiver: X
 Renewal Waiver:

Send Original plus one copy to:
 Waiver Office, California Department of Education
 1430 N Street, Suite 5602
 Sacramento, CA 95814

Send Electronic copy in **Word** and
 back-up material to: waiver@cde.ca.gov

| CD CODE | | | | | | |
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| Local educational agency: Riverside Unified School District | | Michael H. Fine Deputy Superintendent | | Contact person's e-mail address: mfine@rusd.k12.ca.us | |
| Address: 3380 14 th Street | | (City) Riverside | (State) CA | (ZIP) 92501 | Phone (and extension, if necessary): 951.788.7135 x80423 Fax Number: 951.778-5668 |
| Period of request: (month/day/year) From: 07/01/12 To: 06/30/13 | | Local board approval date: (Required) July 16, 2012 | | Date of public hearing: (Required) July 16, 2012 | |

LEGAL CRITERIA

1. Under the general waiver authority of *Education Code* 33050-33053, the particular *Education Code* or *California Code of Regulations* section(s) to be waived (number): Portions of 5019, 5021, 5030 and all of 5020
 Circle One: (EC) or CCR
 Topic of the waiver: Requirement that establishment of trustee areas/adoption of by-trustee election process be put to a vote by the electors of the District.

2. If this is a renewal of a previously approved waiver, please list Waiver Number: _____ and date of SBE Approval _____
 Renewals of waivers must be submitted two months before the active waiver expires.

3. Collective bargaining unit information. Does the district have any employee bargaining units? No Yes If yes, please complete required information below:

Bargaining unit(s) consulted on date(s): July 5, 2012

Name of bargaining unit and representative(s) consulted: CSEA: Richard Carpenter; RCTA: Tim Martin

The position(s) of the bargaining unit(s):

CSEA: Neutral Support Oppose (*Please specify why*) ; RCTA: Neutral Support Oppose

Comments (if appropriate): None

4. Public hearing requirement: A public hearing is not simply a board meeting, but a properly noticed public hearing held during a board meeting at which time the public may testify on the waiver proposal. Distribution of local board agenda does not constitute notice of a public hearing. Acceptable ways to advertise include: (1) print a notice that includes the time, date, location, and subject of the hearing in a newspaper of general circulation; or (2) in small school districts, post a formal notice at each school and three public places in the district.

How was the required public hearing advertised?

Notice in a newspaper Notice posted at each school Other: (*Please specify*) Notice posed at multiple offices and District web page

5. Advisory committee or school site councils. Please identify the council(s) or committee that reviewed this waiver:
 All school site councils and DELAC

Date the committee/council reviewed the waiver request: None

Were there any objection(s)? No Yes (*If there were objections please specify*)

CALIFORNIA DEPARTMENT OF EDUCATION
GENERAL WAIVER REQUEST
GW-1 (10-2-09)

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| <p>6. <i>Education Code</i> or <i>California Code of Regulations</i> section to be waived. If the request is to waive a portion of a section, type the text of the pertinent sentence of the law, or those exact phrases requested to be waived (use a strike out key).</p> <p>See Attachment A</p> | | |
| <p>7. Desired outcome/rationale. Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve improved student performance and/or streamline or facilitate local agency operations. If more space is needed, please attach additional pages.</p> <p>See Attachment B</p> | | |
| <p>8. Demographic Information: (<i>District/school/program</i>) District has a student population of 42,335 and is located in an urban setting (<i>urban, rural, or small city etc.</i>) in Riverside County.</p> | | |
| <p>Is this waiver associated with an apportionment related audit penalty? (per EC 41344) No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> (If yes, please attach explanation or copy of audit finding)</p> <p>Has there been a Categorical Program Monitoring (CPM) finding on this issue? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> (If yes, please attach explanation or copy of CPM finding)</p> | | |
| <p>District or County Certification – <i>I hereby certify that the information provided on this application is correct and complete.</i></p> | | |
| <p>Signature of Superintendent or Designee:</p> | <p>Title: Rick Miller, Ph.D. Superintendent of Schools</p> | <p>Date: 7-16-12</p> |
| <p>FOR CALIFORNIA DEPARTMENT OF EDUCATION USE ONLY</p> | | |
| <p>Staff Name (<i>type or print</i>):</p> | <p>Staff Signature:</p> | <p>Date:</p> |
| <p>Unit Manager (<i>type or print</i>):</p> | <p>Unit Manager Signature:</p> | <p>Date:</p> |
| <p>Division Director (<i>type or print</i>):</p> | <p>Division Director Signature:</p> | <p>Date:</p> |
| <p>Deputy (<i>type or print</i>):</p> | <p>Deputy Signature:</p> | <p>Date:</p> |

Attachment A

6. Education Code or California Code of Regulations section to be waived

The Riverside Unified School District desires to waive the following sections and portions of sections of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision

~~(a) the rearrangement of the boundaries of trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.~~

§ 5020. Presentation of proposal to electors

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of _____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of _____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of _____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of _____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the _____ (insert name) School District by the registered voters of the entire _____ (insert name) School District--Yes" and "For the election of each member of the governing board of the _____ (insert name) School District by the registered voters of the entire _____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters of the entire _____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters of the entire _____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the _____ (insert name) School District and the _____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the _____ (insert name) School District and the _____ (insert name) School District--No."~~

~~—If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 and 5020 is approved by a majority of the voters voting at the election, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established at such election which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by a majority of the voters voting on the measure, or by the county committee on school district organization when no election is required, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved by a majority of the voters voting at the election, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 and 5020, respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Attachment B

6. Desired Outcome/ Rationale

The Riverside Unified School District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting from its current at-large election process for electing its governing board members.

It is imperative that the District adopt trustee areas and complete the implementation process without delay and without interference because like many of the school districts that have been threatened with lawsuits under the California Voting Rights Act of 2001 ("CVRA"), the District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to such litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001 (see California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs \$3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another \$1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and

receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of \$110,000 pursuant to a settlement agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded \$1.8 million in attorneys' fees from that District.

Normally, under Education Code section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through that process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election in November of 2013 which will reduce the District's liability under the CVRA going forward.